

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

HCCR NO. 5 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

PIERRA MUTHONI FRANCIS.....ACCUSED

J U D G M E N T

1. **PIERRA MUTHONI FRANCIS**, the accused herein is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars as per the information present in this court are that on the 1st February, 2018 at Kambani village Muiru Sub-Location, Kithangani Location within Tharaka -Nithi County murdered one Severino Mate Francis (hereinafter to be referred to as the deceased).

2. The accused person herein has been convicted of the said offence upon her own plea of guilty. She has unequivocally admitted the facts that she committed the murder. The state through the office of Director of Public Prosecution has submitted that they have no previous records and so the accused person be treated as a first offender.

3. The accused person has in mitigation prayed for leniency saying she is a bread winner in her family. She further insisted that she committed the murder in self defence stating that the deceased was the aggressor who wanted to stop her love affair with an Akorino man. She further contended that the deceased confronted her with a knife and in the process of struggle, she stabbed the deceased who fell down and later died from the injuries.

4. The actions taken by the accused herein cannot be justified in any way. She had no right to take the life of her brother the deceased despite the objections which he might have raised regarding her relationship with an unnamed Akorino man. I have carefully considered the facts presented to this court regarding the surrounding circumstances that led to the murder of the deceased. It is clear from the facts that the accused is a single mother of five children and her late father is said to have given her a share of land to settle which arrangements appears not to have gone down well with the deceased and his son. It was against that background that the deceased and his son got incensed when they observed a relationship going on between the accused and an Akorino man. The quarrels that arose after the deceased and her son went to the house of the accused to question the said relationship seemed to have triggered a fight between the accused and deceased which resulted into the deceased being stabbed with a kitchen knife. This court observed the kitchen knife produced as P. Exhibit 1 and I noted that the same is a normal ordinary kitchen knife commonly found in many households. The action to stab the deceased though cruel appears not to have been really premeditated notwithstanding the plea of guilty by the accused person.

5. Having found her guilty on her own plea and having considered the above mitigating circumstances and further in light of the Supreme Court's decision in ***FRANCIS KARIUKO MURUATETU & ANOTHER -vs- REPUBLIC (Const. Petition No.15& 16 /2015)***, this court is now alive to the fact that a murder charge does not necessarily attract mandatory death sentence pursuant to the provisions of **Section 204** of the **Penal Code**. This court's hands are not tied to only one sentence prescribed thereat that provision. This court finds that the accused person deserves to have a chance to reform and perhaps learn to contain her anger which could have led her commit the heinous crime. She is hereby sentenced to serve 5 (five) years in prison and thereafter serve 2 years on probation to be supervised by a social worker near her home. She has 14 days Right of Appeal.

Dated, signed and delivered at Chuka this 7th day of November, 2018.

R.K. LIMO

JUDGE

7/11/2018

Judgment signed, dated and delivered in the presence of Mutani holding brief for Kijaru for accused and Machirah for State.

R.K. LIMO

JUDGE

7/11/2018